

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO

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In re:

THE FINANCIAL OVERSIGHT AND
MANAGEMENT BOARD FOR PUERTO RICO,

as representative of

THE COMMONWEALTH OF PUERTO RICO *et al.*,

Debtors.¹

: PROMESA
: Title III
: Case No. 17-BK-3283 (LTS)
: (Jointly Administered)

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**SECOND JOINT STATUS REPORT OF OFFICIAL COMMITTEE OF UNSECURED
CREDITORS AND OVERSIGHT BOARD'S SPECIAL CLAIMS COMMITTEE
CONCERNING INFORMATION FILED UNDER SEAL IN
CONNECTION WITH THE COMMITTEE'S MOTION FOR ORDER TO
PURSUE CERTAIN CAUSES OF ACTION ON BEHALF OF COMMONWEALTH AND
GRANTING RELATED RELIEF**

To the Honorable United States Judge Laura Taylor Swain:

Pursuant to the Court's *Order Regarding Joint Status Report Concerning Information Filed Under Seal in Connection with Committee's Motion for Order to Pursue Certain Causes of Action on Behalf of Commonwealth* [ECF No. 6926], the Official Committee of Unsecured Creditors for all title III Debtors (other than COFINA) (the "Committee") and the Financial Oversight and Management Board for Puerto Rico, acting through its Special Claims Committee (the "SCC" and, together with the Committee, the "Parties"), submit this second joint status report concerning certain information (the "Sealed Information") that the Committee filed under

¹ The Debtors in these Title III cases, along with each Debtor's respective Title III case number listed as a bankruptcy case number due to software limitations and the last four (4) digits of each Debtor's federal tax identification number, as applicable, are the (i) Commonwealth of Puerto Rico (Bankruptcy Case No. 17-BK-3283 (LTS)) (Last Four Digits of Federal Tax ID: 3481), (ii) Employees Retirement System of the Government of the Commonwealth of Puerto Rico ("ERS") (Bankruptcy Case No. 17-BK-3566 (LTS)) (Last Four Digits of Federal Tax ID: 9686), (iii) Puerto Rico Highways and Transportation Authority ("HTA") (Bankruptcy Case No. 17-BK-3567 (LTS)) (Last Four Digits of Federal Tax ID: 3808), (iv) Puerto Rico Sales Tax Financing Corporation ("COFINA") (Bankruptcy Case No. 17-BK-3284 (LTS)) (Last Four Digits of Federal Tax ID: 8474), and (v) Puerto Rico Electric Power Authority ("PREPA") (Bankruptcy Case No. 17-4780 (LTS)) (Last Four Digits of Federal Tax ID: 3747).

seal in connection with its *Motion for Order to Pursue Certain Causes of Action on Behalf of Commonwealth and Granting Related Relief* [ECF No. 6325] (the “Motion”) and its *Omnibus Reply of Official Committee of Unsecured Creditors in Support of Motion for Order Authorizing Committee to Pursue Certain Causes of Action on Behalf of Commonwealth and Granting Related Relief* [ECF No. 6470] (the “Reply”).²

1. The Sealed Information consists of two categories of confidential documents and information: (i) an analysis by the Committee’s proposed special litigation counsel (the “Genovese Analysis”) concerning potential claims against underwriters and certain other third parties in connection with Commonwealth bond issuances, and (ii) three different versions of lists of causes of action (the “Non-final Claims Lists”) that the SCC provided confidentially to the Committee, together with certain redacted references to the contents of the Non-final Claims Lists in the bodies of the Motion and Reply.³ The Parties have conferred and respectfully request that all of the Sealed Information remain under seal until further order of the Court.

2. The Parties believe that maintaining the confidentiality of the Sealed Information is appropriate under the circumstances. Although the information contained in the Genovese Analysis was discussed to some extent during a hearing on April 24, 2019, the entire analysis goes into greater detail than what has been publicly disclosed. The full analysis contains sensitive and confidential work product relating to claims against underwriters and other third parties, which parties are now subject to litigation commenced by the Oversight Board, the SCC,

² The Court entered orders [ECF Nos. 6345 and 6470] granting the Committee’s motion to seal the Sealed information.

³ The Non-final Claims Lists include the list of claims that was provided to the Court at the hearing held on April 18, 2019, provided to counsel for Attorneys’ Eyes Only after the hearing, and subsequently filed under seal at ECF No. 6472.

and the Committee as well as tolling agreements negotiated with potential defendants.

Disclosure of the Genovese Analysis could hinder these litigation and potential litigation efforts.

3. The Non-final Claims Lists should remain sealed for similar reasons. On May 6, 2018, pursuant to the Court's instructions,⁴ the SCC filed with the Court an informative motion [ECF No. 6847] disclosing the final list of causes of action that the Parties and the Oversight Board intend to pursue, including (i) a final list of all avoidance actions (the "Avoidance Actions List") and (ii) a list of the parties and claims included in the complaint against third parties relating to bond issuances (together with the Avoidance Actions, the "Final Claims List"). The SCC's position is that all relevant information concerning the causes of action considered or pursued by the SCC that needs to be made public is set forth in the Final Claims List. The SCC believes that the public disclosure of the Non-final Claims List, which contains sensitive and confidential information relating to the preliminary claims analyses undertaken by the SCC and its professionals, could prejudice the SCC in litigation.

4. Accordingly, for these reasons, the Parties respectfully request that both the Genovese Analysis and the Non-final Claims Lists remain sealed until further order of the Court. The Parties further request that the redacted portions of the Motion and Reply remain sealed, as disclosure of such information would reveal the substance of the Non-final Claims Lists.

5. Both Parties reserve the right to move to unseal the Sealed Information at any time.

⁴ *Order Granting the Urgent Motion of Official Committee of Unsecured Creditors for Order, Under Bankruptcy Code Sections 105(a) and 926(a) and Bankruptcy Rule 9006, Establishing (I) Procedures with Respect to Disclosure of Avoidance Actions to Be Asserted by Oversight Board, and (II) Expedited Briefing Schedule for Potential Request to Appoint Trustee Under Bankruptcy Code Section 926(a) [ECF No. 6086].*

Dated:December 1, 2019

By: /s/ Luc A. Despins

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